# HECKMAN *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 496. Argued October 12, 13, 1911.—Decided April 1, 1912.

The United States has capacity to maintain a suit to set aside conveyances made by allottee Indians of allotted lands within the statutory period of restriction; and this suit brought against numerous defendants, all of whom were grantees of allottees of the same tribe, is properly maintainable in equity; the return of the consideration to the grantee is not essential; there is no defect of parties because the allottee Indians making the conveyances are not joined; there is no misjoinder of causes of action, and the bill is not multifarious.

Congress has power to extend the restrictions upon alienation of allotted lands by allottee Indians, *Tiger* v. *Western Investment Co.*, 221 U. S. 286; and so *held* that the provision for extending the period of alienation of lands allotted in severalty to full-blood Cherokees in the act of May 27, 1908, 35 Stat. 312, c. 199, is a valid exercise by Congress of its power over Indian affairs.

The relations of the United States to the Cherokee Indians as established by treaties and statutes reviewed, and *held* that in executing the policy of extinguishing the tribal organization and title, and the allotment of the tribal lands in severalty, the intent of Congress was to fulfill the national obligation, not only by an equitable apportionment of the property but by safeguarding through suitable restrictions the individual ownership of the allottees.

The placing of restrictions upon the right of alienation was an essential part of the plan of individual allotment of tribal lands among the members of the Five Civilized Tribes; and such restrictions evinced the continuance to this extent of the guardianship of the United States over the Indians as wards of the Nation.

Conferring citizenship upon an allottee Indian is not inconsistent with retaining control over his disposition of lands allotted to him. *Tiger* v. *Western Investment Co.*, 221 U. S. 286.

The maintenance of limitations prescribed by Congress as part of its plan for distribution of Indian lands is distinctly an interest of the United States, and one which it may sue in its own courts to enforce.

A transfer of allottee lands in violation of statutory restrictions is not simply a violation of the proprietary rights of the Indian but of the governmental rights of the United States.

Where there is a violation of the rights of the United States, and a justiciable question as to the effect thereof, the United States may invoke the jurisdiction of a court of equity, and a pecuniary interest in the controversy is not essential. *United States* v. *American Bell Telephone Co.*, 128 U. S. 315.

Congress has power to authorize the Government to sue to maintain the statutory restrictions upon alienation of Indian allottee lands. *Minnesota* v. *Hitchcock*, 185 U. S. 373.

Where Congress has power to authorize the Government to sue, an appropriation for expenses of suits already brought is a recognition of the right to bring them; and so *held* that the provisions of the act of May 27, 1908, 35 Stat. 312, c. 199, and of subsequent acts making appropriations for suits brought to cancel conveyances made by Cherokee allottee Indians in violation of statutory restrictions on alienation are within the power of Congress.

The presence of the Indian grantors as parties to suits brought by the United States to set aside conveyances of allotted lands made in violation of statutory restrictions on alienation is not essential; nor are the grantees placed in danger of double litigation by reason of the absence of the grantors as parties.

The effect of an act of Congress passed in pursuance of a policy and a matter of general knowledge cannot be destroyed so as to assist those who attempted to profit by violating its provisions; and so *held* that when a conveyance is made by an allottee Indian in violation of statutory restrictions on alienation, the return of the consideration is not an essential prerequisite to a decree of cancellation.

*Quære*, but not presented on this record, whether cases may arise where, without interfering with the policy of restricting alienation,

the decree should provide in cancelling the transfers for a return of the consideration and the bringing in as parties of any person whose presence might be necessary.

The bill in a suit brought to cancel for the same reason in each instance a large number of conveyances of allotted lands, made by different members of the same tribe to different defendants, *held* not to be multifarious in this case as it is manifestly in the interest of justice to avoid unnecessary suits; nor is there in such a case a misjoinder of causes of action.

179 Fed. Rep. 13, modified and affirmed.

THE United States by its Attorney-General, upon the recommendation of the Secretary of the Interior, brought this suit in the Circuit Court of the United States for the Eastern District of Oklahoma to cancel certain conveyances of allotted lands made by members of the Cherokee Nation. Demurrer to the bill was sustained by the Circuit Court and the bill was dismissed. *United States* v. *Allen, and similar cases*, 171 Fed. Rep. 907. The judgment was reversed by the Circuit Court of Appeals and the trial court was directed to proceed with the suits in accordance with the views expressed in its opinion. 179 Fed. Rep. 13.

The Government states in its brief that between July 14, 1908, and October 12, 1909, the United States brought 301 bills in equity against some 16,000 defendants to cancel some 30,000 conveyances of allotted lands, made by as many or more grantors, members of the Five Civilized Tribes, upon the ground that the conveyances were in violation of existing restrictions upon the power of alienation. It is said that the selection and grouping of defendants in each case was determined by the substantial identity of the facts and propositions of law upon which the question of alienability of the lands depended.

Forty-six bills were filed to cancel 3715 conveyances of lands of Cherokee Indians.

This particular suit deals with conveyances by Cherokee allottees of the full-blood of lands allotted subsequent

to the act of April 26, 1906. 34 Stat. 137, c. 1876. The grantors were not made parties. There are involved a number of separate conveyances to distinct grantees, parties defendant, two of whom prosecute this appeal from the judgment of the Circuit Court of Appeals.

The bill alleges that under the treaties between the United States and the Cherokee tribe of Indians and its members, the United States granted to the Cherokee tribe certain lands in the Indian Territory, now the Eastern District of Oklahoma, and obligated itself by the terms of these treaties and of its laws to protect the Cherokee tribe in the enjoyment of the lands granted; that according to the terms of said treaties and laws, and of the patent to the lands, the Cherokee tribe and every member thereof have at all times been and now are without power to dispose of any interest in the lands without the authority of the United States, or otherwise than in the manner it prescribed; that the Government of the United States, by reason of the helpless and dependent character of the Indian tribes, and of their several members, is the guardian and has exclusive control of their property, by virtue of which there is imposed upon the United States the duty to do whatever may be necessary for their guidance, welfare and protection; that the Cherokee tribe has always been and is now treated as a tribe of Indians by the Government of the United States and its several branches; that this tribe is now under the care of an Indian agent duly appointed under the laws of Congress, and large sums are still appropriated by Congress for the benefit and protection of the tribe and of its individual members, and for the maintenance of schools; and that under the laws of Congress the Government of the United States still has a large sum of money in its possession belonging to the tribe, and there still remains unallotted a large area of tribal lands, the common property of the tribe.

It is further alleged that in the exercise of its powers to

regulate and govern the affairs of the Cherokee tribe of Indians and its members, having in view their welfare and the carrying out of its treaty obligations, Congress by the act approved July 1, 1902 (32 Stat. 716, c. 1375), provided that the lands belonging to the Cherokee tribe in the present State of Oklahoma should be allotted in severalty among its members, but deeming the Indians to be untutored and improvident and still requiring the protection and supervision of the General Government, it was provided by this act that the portion of the lands so allotted as homesteads should be inalienable, and further that the allotted lands other than homesteads should be alienable only in five years after the issuance of patent to the allottee, and that, in accordance with its provisions, the act of Congress was duly ratified by the Cherokee people on the seventh day of August, 1902.

The bill describes certain conveyances of lands situated in the Eastern District of Oklahoma made by Cherokee Indians to the defendants, respectively, with particulars as to the lands embraced in the conveyances, the consideration, the dates of execution, acknowledgment and recording, and also the dates of the allotment certificates and of the recording of allotment deeds. The dates of the conveyances were between November 19, 1904, and May 7, 1908, and of the allotment certificates between April 30, 1906, and May 4, 1908. It is alleged that each of the tracts of land described was land of the Cherokee tribe which had been allotted to full-blood Indians of that tribe, that is, to those mentioned as grantors in the conveyances specified; that they were so allotted as to be subject to restrictions upon their alienation and incumbrance, and were so subject at the date of the execution and recording of the deeds described, which restrictions have never been removed; that the facts concerning the allotments and restrictions were matters of public record and notorious, and that the restrictions were im-

posed by public laws of the United States of which the defendants had knowledge and by which they were put upon inquiry and notice as to all matters concerning the condition of the particular tracts of land mentioned in the bill; that the deeds had been secured by the defendants in willful violation of law and of the duty which rested upon this Nation and every member thereof, and for the purpose of unlawfully incumbering the allotted lands; and that by causing the deeds to be recorded the defendants had unlawfully obtained an apparent title or interest of record in the lands described in defiance of said agency supervision and in open violation and contempt of the laws of the United States to the irreparable injury of the Indians and in direct interference with the supervision and control, policy and duty of the Government of the United States in that behalf.

It is also averred on information and belief that the defendants have unlawfully secured from members of the Cherokee tribe other deeds, conveyances, mortgages, powers of attorney and contracts for and about their allotments, which the Indians and freedmen were without authority to make; that as these have not been recorded the complainant is unable to give a minute and correct description without the discovery prayed for; that the defendants are continuing to induce the members of the Cherokee tribe named in the bill and other members of said tribe to execute deeds and instruments for and about their allotments, and threaten that they will continue such unlawful acts; that this unlawful conduct will greatly harass the United States in the discharge of its duties and in the administration of its policy in relation to these Indians and compel it to bring many suits in order to annul the deeds and instruments which the defendants have taken and are taking as alleged; that in addition to the instruments specified in the bill upward of four thousand instruments of a similar nature purporting to con-

vey or to incumber the title to lands located within the Eastern District of Oklahoma and duly allotted to members of the Five Civilized Tribes or belonging to said tribes, have been executed and placed on record by the defendants herein and other persons and corporations in contravention of the treaties, entered into between the United States and the several Indian tribes, and the laws of the United States; and that unless the United States shall be permitted to join in its bills numerous defendants, against each of whom it has a like cause of action, and against each of whom it seeks the same relief, and whose pretended claims are based upon similar facts and involve precisely the same questions of law, it will be driven to the necessity of bringing a great number of distinct and separate suits, and that it will be practically impossible for the United States to prosecute, and for the courts to adjudicate and dispose of so large a number of separate and distinct suits within any reasonable length of time.

The bill prays that the specified conveyances be declared void and that the title to the lands described be decreed to be in the allottees or their heirs, subject to the terms, conditions and limitations contained in the treaties, agreements and laws of the United States. Discovery of all claims to lands allotted to any of the Cherokee tribe or to unallotted lands of the tribe, and the surrender of instruments for cancellation, are sought; and it is also prayed that all defendants in possession, or claiming possession, be ordered to vacate or to cease making such claims, and that the United States have such other and further relief as may be proper.

The objections to the sufficiency of the bill as set forth in the demurrers are thus summarized in the appellants' brief:

(1) That the United States has no capacity to maintain the suit.

(2) That the bill is wholly without equity.

(3) That there is a defect of parties.
(4) That there is a misjoinder of alleged causes of action.
(5) That the bill is multifarious.

The appeal from the judgment of the Circuit Court of Appeals, which reversed the judgment of the Circuit Court sustaining the demurrers, is taken under § 3 of the act of June 25, 1910, c. 408 (36 Stat. 837).

*Mr. Joseph C. Stone, Mr. Robert J. Boone* and *Mr. S. T. Bledsoe* for appellants: [1]

For treaties and statutory provisions affecting the lands of allottees in the Five Civilized Tribes, see as to Tribal Titles, of the Choctaws and Chickasaws, Treaties of October, 1820, 7 Stat. 210; September 27, 1830, 7 Stat. 333; of 1837, 11 Stat. 57; of 1855, act of Congress of May 28, 1830; Treaty of 1855, 11 Stat. 611; of 1866, 14 Stat. 769; of the Creeks; Treaty of February 1, 1833, 7 Stat. 417, and patent issued pursuant thereto; of 1852; Treaty of August 7, 1856; of the Seminoles; Art. 1 of Treaty of 1856, 11 Stat. 699; Art. III of Treaty of 1866, 14 Stat. 755; of the Cherokees; Treaty of May 6, 1828; of August 6, 1846, 9 Stat. 871.

As to title of allottees to individual allotments, see Atoka Agreement with the Choctaws and Chickasaws, § 29, act of June 28, 1898, 30 Stat. 495, and Supplemental Agreement, 32 Stat. 641; § 3, original Creek Agreement, 31 Stat. 861; Seminole Agreement, December 16, 1897, 30 Stat. 567; Cherokee Agreement, 32 Stat. 716.

All the above provisions with reference to the allotment of lands of the various tribes should be considered and

[1] The succeeding cases of *Mullen* v. *United States*, *post*, p. 448; *Goat* v. *United States*, *post*, p. 458; and *Deming Investment Co.* v. *United States*, *post*, p. 471, which were appeals taken by different parties from the decrees entered by the Circuit Court of Appeals in *United States* v. *Allen and similar cases*, 179 Fed. Rep. 13, were argued simultaneously, with this case.

construed in the light of the previous legislation looking to allotment.

For legislation affecting all five of the tribes, see act of March 3, 1893, 27 Stat. 645, authorizing the appointment of commissioners.

Pursuant to the authority conferred upon this commission to enter into agreements with the Five Civilized Tribes for the allotment in severalty of their lands and the provision that on the allotment of the lands held by such tribes, respectively, the reversionary interest of the United States therein should be relinquished and should cease, negotiations were entered into, resulting in the agreements above quoted from.

Relinquishment as used in this connection is correctly interpreted in *United States* v. *Joseph*, 94 U. S. 614.

When the members of each of the Five Civilized Tribes select, as required by the provisions referred to, the lands they desire to take in allotment, and that selection is approved, nothing further remains to be done by such members in order to perfect their title to the lands so selected. The issuance of the allotment certificate and patent which follows are mere ministerial acts. It requires neither allotment certificate nor patent to pass title to the allottee. The provision that "there shall be allotted," etc., contained in the various agreements is sufficient when the land is selected and designated to pass title to the allottee without the necessity of certificate or patent. *Wallace* v. *Adams*, 143 Fed. Rep. 716; *Jones* v. *Meehan*, 175 U. S. 1, 16; *Doe* v. *Wilson*, 23 How. 457; *Quinney* v. *Denney*, 18 Wisconsin, 485; *Crews* v. *Burcham*, 1 Black, 352; *French* v. *Spencer*, 21 How. 228; *Stark* v. *Starrs*, 6 Wall. 402; *Lamb* v. *Davenport*, 18 Wall. 307; *Ryan* v. *Carter*, 93 U. S. 78; *Best* v. *Polk*, 18 Wall. 112; *Oliver* v. *Forbes*, 17 Kansas, 113; *Clark* v. *Lord*, 20 Kansas, 390; *Francis* v. *Francis*, 99 N. W. Rep. 000, 203 U. S. 233; *United States* v. *Torrey*, 154 Fed. Rep. 263; *United States*

v. *Moore*, 154 Fed. Rep. 712; *New York Indians* v. *United States*, 170 U. S. 1.

The mere existence of restriction upon alienation imposed for the protection of the allottee vests no interest whatever in the United States in reversion or otherwise. A violation of the statute imposing restrictions upon alienation does not in any event redound to the interest of the United States or impair the title of the allottee. *Libby* v. *Clark*, 118 U. S. 250, 255; *Schrimpscher* v. *Stockton*, 183 U. S. 290, 299.

The whole estate having vested in the allottee, there can be no possible interest remaining in the United States. Not even a possibility of forfeiture or reversion.

The United States owns no property interest upon which to maintain this action, nor may the same be maintained for the protection of citizens, generally, against violations of law.

The sole authority of the Circuit Courts of the United States to exercise jurisdiction over causes where the United States is plaintiff or petitioner, is given by the act of August 13, 1888, 25 Stat. 434. For its construction see *United States* v. *Sayward*, 160 U. S. 493; *United States* v. *Payne Lumber Company*, 206 U. S. 467; *United States* v. *Anger*, 153 Fed. Rep. 671; *United States* v. *Paine Lumber Company*, 154 Fed. Rep. 263.

The former members of the Five Civilized Tribes are citizens of the United States and the State of Oklahoma, and not wards of either the state or the National Government. *Mackey* v. *Cox*, 18 How. 100; *Mehlin* v. *Ice*, 56 Fed. Rep. 12.

Allotment agreements were made by the various tribes and approval thereof given by Congress as follows:

Seminole Original Allotment Agreement (30 Stat. 567); Seminole Supplemental Allotment Agreement (31 Stat. 250); Choctaw and Chickasaw Allotment Agreement (30

Stat. 495–505); Supplemental Allotment Agreement (32 Stat. 641); Creek Allotment Agreement (31 Stat. 861); Creek Supplemental Agreement (32 Stat. 500), and Cherokee Allotment Agreement (32 Stat. 716).

The policy of isolation from surrounding country applied to Indians on Indian Reservations was never, in fact, applied to the territory of the Five Civilized Tribes. In 1890 there were 180,182 persons residing in Indian Territory, of whom 51,279 were Indians. In 1900, the population of Indian Territory had increased to 392,000, of which 52,500 were Indians. In 1890 the Indian population, which included a few more Indians than those of the Five Civilized Tribes, constituted 25.5 per cent of the total population and in 1900, 13.4 per cent.

These conditions, and the progress made in securing of allotment agreements with the various tribes, caused Congress in 1901 to deem it advisable to confer the full rights of citizenship upon every Indian in the Indian Territory. See act of March 3, 1901, 31 Stat. 1447.

For effect of the General Allotment Act of 1887 as applied to conditions similar to those in Oklahoma with reference to citizenship, see *United States* v. *Saunders*, 96 Fed. Rep. 268; *United States* v. *Kopp*, 110 Fed. Rep. 161; *Ex parte Viles*, 139 Fed. Rep. 68; *United States* v. *Dooley*, 151 Fed. Rep. 697; *United States* v. *Auger*, 153 Fed. Rep. 671; *Ex parte Savage*, 158 Fed. Rep. 214; *United States* v. *Boss*, 160 Fed. Rep. 132.

No such public policy exists as that upon which the jurisdiction of the trial court was sustained by majority of the Circuit Court of Appeals.

The allottees are indispensable parties. They own the lands involved and have such an interest in the subject-matter of the controversies that final decrees cannot be made without affecting their interest.

Every party to a contract of sale except one who has released his interest or an agent through whom the title

has passed is a necessary party to set it aside. *Shields* v. *Barrow*, 17 How. 130; *Coiron* v. *Millaudon*, 19 How. 113; *Gaylords* v. *Kelshaw*, 1 Wall. 81; *Ribbon* v. *Railroad Cos.*, 16 Wall. 446; *Lawrence* v. *Wirtz*, 1 Wash. C. C. 417; *Tobin* v. *Walkinshaw*, 1 McAll. 26; *Bell* v. *Donohoe*, 17 Fed. Rep. 710; *Florence Machine Co.* v. *Singer Mfg. Co.*, 8 Blatchf. 113; *Chadbourne* v. *Coe*, 45 Fed. Rep. 822; *Empire C. & T. Co.* v. *Empire C. & M. Co.*, 150 U. S. 159; *New Orleans W. Co.* v. *New Orleans*, 164 U. S. 471; *S. C.*, in C. C. A., 51 Fed. Rep. 479; *Clark* v. *Great Northern Ry. Co.*, 81 Fed. Rep. 282; but see *French* v. *Shoemaker*, 14 Wall. 314; *West* v. *Duncan*, 42 Fed. Rep. 430; *Smith* v. *Lee*, 77 Fed. Rep. 779.

In every case where the parties acted in good faith the court ought to decree a personal judgment against the allottees for the amount of the consideration, for it was paid by mistake and the consideration for the payment has failed. If the contracts were void, but in good faith, equity will impute a promise to repay. *Wrought Iron Bridge Co.* v. *Utica*, 17 Fed. Rep. 316; *City of Louisiana* v. *Wood*, 12 Otto, 294; *Marsh* v. *Fulton County*, 10 Wall. 676; *Tate* v. *Gains* (Okla.), 105 Pac. Rep. 193.

Though the void deeds will be treated as nullities, the law will imply just such an obligation to pay for the enhanced value to the premises on account of the improvements as the Secretary of the Interior would have permitted the allottees to contract upon proper application to him. Where the lands had no rental value, and, on account of the improvements so made in good faith, now have a great rental value, it should be decreed that the rentals or a part thereof be set aside each year until compensation shall have been made for the same. *Muskogee Development Co.* v. *Green* (Okla.), 97 Pac. Rep. 619; *White* v. *Brown* (Ind. T.), 38 S. W. Rep. 335; *Poplin* v. *Clausen*, 38 S. W. Rep. 974; *Shumate* v. *Harbin*, 15 S. E. Rep. 270; *Brockway* v. *Thomas*, 36 Arkansas, 518; *Beard* v. *Dansby*,

48 Arkansas, 182; 2 S. W. Rep. 701; *Potts* v. *Cullum*, 68 Illinois, 217.

The United States cannot maintain this bill. It is wholly devoid of equity. The United States has not offered to return the consideration; it is out of possession, and if the facts alleged are true, it has an adequate remedy at law. *Frost* v. *Spittley*, 121 U. S. 552; *Orton* v. *Smith*, 18 How. 263; *Dick* v. *Foraker*, 155 U. S. 404, 414; *United States* v. *Wilson*, 118 U. S. 86.

If the conveyances referred to are void they constitute no cloud upon the title of the owner thereof, and a bill will not lie to cancel the same, even though the other grounds of equitable jurisdiction are present. *United States* v. *Saunders*, 96 Fed. Rep. 268; *Piersol* v. *Elliott*, 6 Pet. 96, 101; *Rich* v. *Braxton*, 158 U. S. 375, 407; *Kennedy* v. *Hazelton*, 128 U. S. 667, 672; *Town of Venice* v. *Woodruff*, 62 N. Y. 462, 467; *March, Executrix*, v. *The City of Brooklyn*, 59 N. Y. 280.

The bill of complaint is multifarious.

*The Solicitor General* and *Mr. A. N. Frost* and *Mr. Harlow A. Leekley*, Special Assistants to the Attorney General, for the United States:

The United States may by suit in equity enforce the restrictions imposed by it upon the alienation of allotted tribal lands by members of the Indian tribes. *Marchie Tiger* v. *Western Investment Co.*, 221 U. S. 286; *United States* v. *Allen*, 179 Fed. Rep. 13; *Conley* v. *Ballinger*, 216 U. S. 84; *United States* v. *Kagama*, 118 U. S. 375; *Worcester* v. *Georgia*, 6 Pet. 515; *In re Debs*, 158 U. S. 564; *United States* v. *Am. Bell Tel. Co.*, 128 U. S. 315; *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273; *United States* v. *Rickert*, 188 U. S. 432; *In the Matter of Heff*, 197 U. S. 488; *Beck* v. *Flournoy Live Stock Co.*, 65 Fed. Rep. 30; *United States* v. *Flournoy Live Stock &c. Co.*, 69 Fed. Rep. 886; *Pilgrim* v. *Beck*, 69 Fed. Rep. 895; *United States* v. *Flour-*

*noy &c. Co.*, 71 Fed. Rep. 576; *Rainbow* v. *Young*, 161 Fed. Rep. 835.

The Indian allottees are not necessary parties to such a suit, as the United States has rights and interests of its own to conserve and is, moreover, under obligation to protect the Indians in those restrictions. *United States* v. *Allen*, 179 Fed. Rep. 13; *United States* v. *Am. Bell Tel. Co.*, 128 U. S. 315; *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273; *United States* v. *Hammers*, 221 U. S. 220; *Marchie Tiger* v. *Western Investment Co.*, 221 U. S. 286; *United States* v. *Trinidad Coal Co.*, 137 U. S. 160; *Pilgrim* v. *Beck*, 69 Fed. Rep. 895.

The bill is not multifarious for it joins only such transactions as depend for their validity or invalidity upon the same state of facts and the same propositions of law. Story on Equity Pleading, 14th ed., § 539; Jennison's Chancery Practice, 26; *Hale* v. *Allinson*, 188 U. S. 56; *Ill. Cent. R. R. Co.* v. *Caffrey*, 128 Fed. Rep. 770; *Bitterman* v. *L. & N. R. R. Co.*, 207 U. S. 205.

Mr. Justice Hughes, after making the above statement, delivered the opinion of the court.

The conveyances, which this suit was brought to cancel, were executed by members of the Cherokee tribe of Indians, of the full-blood, of lands allotted to them in severalty. The statute under which the allotments were made (act of July 1, 1902, c. 1375, 32 Stat. 716), accepted by the Cherokee nation on August 7, 1902, provided that the lands should be inalienable for a period specified. Sections 11–15 (*Id.*, p. 717). The lands in question were "surplus" lands, that is, those other than homesteads. While the restrictions, applicable to lands of this character, were still in force, Congress extended the period of inalienability by the act of April 26, 1906. 34 Stat. 137, c. 1876. Section 19 of this act (*Id.*, p. 144) is as follows:

"Sec. 19. That no full-blood Indian of the Choctaw,

Chickasaw, Cherokee, Creek or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this Act, unless such restriction shall, prior to the expiration of said period, be removed by Act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior: *Provided, however,* That such full-blood Indians of any of said tribes may lease any lands other than homesteads for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior; and in case of the inability of any full-blood owner of a homestead, on account of infirmity or age, to work or farm his homestead, the Secretary of the Interior, upon proof of such inability, may authorize the leasing of such homestead under such rules and regulations: *Provided further,* That conveyances heretofore made by members of any of the Five Civilized Tribes subsequent to the selection of allotment and subsequent to removal of restriction, where patents thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording or delivery of patent or deed; but this shall not be held or construed as affecting the validity or invalidity of any such conveyance, except as hereinabove provided; and every deed executed before, or for the making of which a contract or agreement was entered into before the removal of restrictions, be and the same is hereby, declared void: *Provided further,* That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee."

The power of Congress thus to extend the restriction upon alienation was sustained by this court in *Tiger* v.

*Western Investment Co.*, 221 U. S. 286. There the question related to a conveyance of inherited lands, made by a Creek Indian, of the full-blood, without the approval of the Secretary of the Interior as required by § 22 of the act of 1906. The conveyance had been executed after the expiration of the five-year limitation upon alienation, prescribed by the supplemental agreement with the Creek Nation (act of June 30, 1902, c. 1323, § 16; 32 Stat. 503); but meanwhile, and during the continuance of the original restriction, the act of 1906 had been enacted. It was held that the restriction of the later statute was valid.

The reasoning of this decision is conclusive as to the validity of the extension by § 19 of the act of 1906 of the period of inalienability of lands allotted, as in this case, to full-blood Cherokees. And the same principle governs the restrictions provided by the act of May 27, 1908, c. 199, 35 Stat. 312.

It is not open to dispute that, upon the facts alleged, all the conveyances specified in the bill in this suit were executed in violation of restrictions lawfully imposed.

The principal question now presented is with respect to the capacity of the United States to sue in its own courts to enforce these restrictions.

The relations of the United States to the Cherokees have repeatedly been described in the decisions of this court. *Cherokee Nation* v. *Georgia*, 5 Pet. 1; *Worcester* v. *Georgia*, 6 Pet. 515; *United States* v. *Rogers*, 4 How. 567; *Mackey* v. *Coxe*, 18 How. 100; *The Cherokee Trust Funds*, 117 U. S. 288; *Cherokee Nation* v. *Southern Kansas Ry. Co.*, 135 U. S. 641; *United States* v. *Old Settlers*, 148 U. S. 427; *Cherokee Nation* v. *Journeycake*, 155 U. S. 196; *Stephens* v. *Cherokee Nation*, 174 U. S. 445; *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294; *Lowe* v. *Fisher*, 223 U. S. 95. But in view of the nature of the present controversy the facts of main importance may be briefly restated.

The United States made its first treaty with the Cherokees on November 28, 1785 (7 Stat. 18). Constituting one of the most powerful tribes of Indians which then inhabited the country, they claimed the principal part of the territory now comprised within the States of North and South Carolina, Georgia, Alabama and Tennessee. By this treaty, the Cherokees acknowledged that they were under the protection of the United States of America and of no other sovereign, the boundary of their hunting grounds was fixed, and it was provided that "for the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States in Congress assembled shall have the sole and exclusive right of regulating trade with the Indians, and managing all their affairs in such manner as they think proper." Another treaty with similar objects was made on July 2, 1791 (7 Stat. 39). In 1817, following a migration of a portion of the tribe to lands of the United States on the Arkansas and White Rivers, the Cherokee Nation ceded to the United States certain tracts which they formerly held, and in exchange the United States bound themselves to give to that branch of the Nation on the Arkansas as much land as they had received, or might thereafter receive, east of the Mississippi. 7 Stat. 156 (July 8, 1817). A further cession of land was made to the United States in 1819. 7 Stat. 195 (February 27, 1819).

By the terms of the treaty of May 6, 1828 (7 Stat. 311, 315), with the representatives of the Cherokee Nation, West, reciting the purpose of securing to them and their friends and brothers from the east who might join them, "a permanent home" which should "under the most solemn guarantee of the United States be, and remain, theirs forever—a home that shall never, in all future time, be embarrassed by having extended around it the lines or placed over it the jurisdiction of a Territory or State,"

the United States agreed to guarantee to the Cherokees forever seven millions of acres of land, as described, situated in what became known as the Indian Territory, and, in addition, "a perpetual outlet, West, and a free and unmolested use of all the Country lying West of the Western boundary of the above described limits, and as far West as the sovereignty of the United States and their right of soil extend." On May 28, 1830, Congress authorized the President to assure title to the Indians to such exchanged lands, and to execute a patent if desired, "provided always, that such lands shall revert to the United States, if the Indians become extinct or abandon the same." 4 Stat. 411. A supplementary treaty confirming the guarantee of lands and fixing boundaries was made on February 14, 1833. 7 Stat. 414.

The continued presence of the Eastern Cherokees gave rise to serious controversies and oppressive legislation in the States where they resided. To terminate these difficulties and "with a view to reuniting their people in one body," a treaty was signed at New Echota, in the State of Georgia, on December 29, 1835. 7 Stat. 478. The Cherokee Nation ceded to the United States all their land east of the Mississippi River in consideration of the payment of five million dollars; and in addition to the lands described in the treaties of 1828 and 1833, the United States agreed to convey to the Cherokees eight hundred thousand acres for the sum of five hundred thousand dollars. It was stipulated that the ceded lands should not at any future time, without the consent of the Cherokee Nation, be included "within the territorial limits or jurisdiction of any State or Territory," and the United States agreed to secure to the Cherokee Nation "the right by their national councils" to make such laws as might be deemed necessary "for the government and protection of the persons and property within their own country belonging to their people or such

persons as have connected themselves with them: provided always that they shall not be inconsistent with the constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also, that they shall not be considered as extending to such citizens and army of the United States as may travel or reside in the Indian country by permission according to the laws and regulations established by the Government of the same."

The two tracts—the one consisting of the seven million acres and the "outlet," together aggregating 13,574,135.14 acres, and the other of 800,000 acres—were conveyed to the Cherokee Nation by patent on December 31, 1838, subject to the condition specified in the act of 1830, that the land should revert to the United States if the Cherokee Nation should become extinct or abandon the same. On September 6, 1839, the Cherokees adopted a constitution for the reunited nation. Dissensions having arisen among the members of the tribe, a new treaty was made with the United States on August 6, 1846 (9 Stat. 871), in which it was set forth that the lands occupied by the Cherokee Nation should "be secured to the whole Cherokee people for their common use and benefit," and provision was made for the settlement of differences. There was a further treaty on July 19, 1866. 14 Stat. 799.

The "Cherokee Outlet" was purchased by the United States in 1893 for the sum of $8,595,736. 27 Stat. 640.

At this time, the conditions in the Indian Territory were most unsatisfactory. There had been a large accession of whites who made no claim to Indian citizenship and were residing in the Territory with the approval of the Indian authorities. These greatly outnumbered the Indians. The existing means of government had failed of their purpose, and an exigency had arisen, originally unforeseen, requiring the adoption of new measures. This led to the enactment of legislation which contemplated

the dissolution of the tribal organizations and the distribution of the tribal property. By § 15 of the act of March 3, 1893, c. 209 (27 Stat. 612, 645), it was provided: "The consent of the United States is hereby given to the allotment of lands in severalty not exceeding one hundred and sixty acres to any one individual within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws and Seminoles; and upon such allotments the individuals to whom the same may be alloted shall be deemed to be in all respects citizens of the United States, . . . and upon the allotment of the lands held by said tribes respectively the reversionary interest of the United States therein shall be relinquished and shall cease." And by § 16 of the same act provision was made for the appointment of commissioners to enter into negotiations with the Five Civilized Tribes "for the purpose of the extinguishment of the national or tribal title to any lands within that Territory now held by any and all of such nations or tribes, either by cession of the same or some part thereof to the United States, or by the allotment and division of the same in severalty among the Indians of such nations or tribes, respectively, as may be entitled to the same, or by such other method as may be agreed upon between the several nations and tribes aforesaid, or each of them, with the United States, with a view to such and [*sic*] adjustment, upon the basis of justice and equity, as may, with the consent of such nations or tribes of Indians, so far as may be necessary, be requisite and suitable to enable the ultimate creation of a State or States of the Union which shall embrace the lands within such India [*sic*] Territory."

But in executing this policy, Congress was solicitous to conserve the interests of the Indians and to fulfill the national obligation, not simply by assuring an equitable apportionment of the property, but by safeguarding the individual ownership of allottees through suitable restric-

tions which were designed to secure them in their possession and to prevent their exploitation.

The necessity for legislative action, and the purposes to be subserved, were fully presented in the report submitted in May, 1894, by the Senate Committee on the Five Civilized Tribes (S. Rept. No. 377, 53d Cong. 2d Sess.), a portion of which is quoted in the statement of facts made by the court in *Stephens* v. *Cherokee Nation*, *supra*, pp. 447–451. The committee said (p. 448): "'This section of the country was set apart to the Indian with the avowed purpose of maintaining an Indian community beyond and away from the influence of white people. We stipulated that they should have unrestricted self-government and full jurisdiction over persons and property within their respective limits, and that we would protect them against intrusion of white people, and that we would not incorporate them in a political organization without their consent. Every treaty, from 1828 to and including the treaty of 1866, was based on this idea of exclusion of the Indians from the whites and non-participation by the whites in their political and industrial affairs. We made it possible for the Indians of that section of country to maintain their tribal relations and their Indian polity, laws and civilization if they wished so to do. And, if now, the isolation and exclusiveness sought to be given to them by our solemn treaties is destroyed, and they are overrun by a population of strangers five times in number to their own, it is not the fault of the Government of the United States, but comes from their own acts in admitting whites to citizenship under their laws and by inviting white people to come within their jurisdiction, to become traders, farmers and to follow professional pursuits.'"

And, referring to the tribal lands, the report continued: "The theory of the Government was when it made title to the lands in the Indian Territory to the Indian tribes as bodies politic that the title was held for all of the Indians

of such tribe. All were to be the equal participators in the benefits to be derived from such holding. But we find in practice such is not the case. A few enterprising citizens of the tribe, frequently not Indians by blood but by intermarriage, have in fact become the practical owners of the best and greatest part of these lands, while the title still remains in the tribe—theoretically for all, yet in fact the great body of the tribe derives no more benefit from their title than the neighbors in Kansas, Arkansas or Missouri. . . . As we have said, the title to these lands is held by the tribe in trust for the people. We have shown that this trust is not being properly executed, nor will it be if left to the Indians, and the question arises what is the duty of the Government of the United States with reference to this trust? While we have recognized these tribes as dependent nations, the Government has likewise recognized its guardianship over the Indians and its obligations to protect them in their property and personal rights. In the treaty with the Cherokees, made in 1846, we stipulated that they should pass laws for equal protection, and for the security of life, liberty and property. If the tribe fails to administer its trust properly by securing to all the people of the tribe equitable participation in the common property of the tribe, there appears to be no redress for the Indian so deprived of his rights, unless the Government does interfere to administer such trust."

The commission for which provision was made by the act of 1893—known as the Dawes Commission—also made reports to Congress (November 20, 1894, and November 18, 1895), "finding a deplorable state of affairs and the general prevalence of misrule." In the report of November 18, 1895, the commission said: "There is no alternative left to the United States but to assume the responsibility for future conditions in this Territory. It has created the forms of government which have brought

about these results, and the continuance rests on its authority. . . . The commission is compelled by the evidence forced upon them during their examination into the administration of the so-called governments in this Territory to report that these governments in all their branches are wholly corrupt, irresponsible, and unworthy to be longer trusted with the care and control of the money and other property of Indian citizens, much less their lives, which they scarcely pretend to protect." *Stephens* v. *Cherokee Nation*, *supra*, pp. 452, 453.

By the acts of June 10, 1896, c. 398 (29 Stat. 321, 339), and of June 7, 1897, c. 3 (30 Stat. 62, 84), the authority of the Dawes Commission was continued and extended; and provision was made for the hearing and determination of applications for citizenship in the tribes and for the making of rolls of membership. It was further provided by the statute of 1897, that none of the acts, ordinances, and resolutions (with certain stated exceptions) of the council of either of the Five Tribes should take effect if disapproved by the President. Then followed the act of June 28, 1898, c. 517 (30 Stat. 495), a comprehensive statute embracing provisions as to the enrollment of members of the tribes and for the allotment of "the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment, among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location and value of the same." By this legislation "the United States practically assumed the full control over the Cherokees as well as the other nations constituting the five civilized tribes and took upon itself the determination of membership in the tribes for the purpose of adjusting their rights in the tribal property." *Cherokee Nation* v. *Hitchcock*, *supra*, p. 306.

Between 1898 and 1902, allotment agreements with

the Five Civilized Tribes were approved by Congress. The allotment act of July 1, 1902, which related to the Cherokees (32 Stat. 716, c. 1375), provided (§ 63) that the tribal government should not continue longer than March 4, 1906. But by joint resolution of Congress passed March 2, 1906, the tribal existence and government of this tribe and of the others were "continued in full force and effect for all purposes under the existing laws until all property of such tribes, or the proceeds thereof, shall be distributed among the individual members of said tribes unless hereafter otherwise provided by law." 34 Stat. 822. A similar provision was contained in the act of April 26, 1906. 34 Stat. 137, 148.

The placing of restrictions upon the right of alienation was an essential part of the plan of individual allotment; and limitations were imposed by each of the allotment agreements. The separate statutes were supplemented by the general acts of 1906 and 1908, already mentioned. These restrictions evinced the continuance, to this extent at least, of the guardianship which the United States had exercised from the beginning. That the conferring of citizenship was in no wise inconsistent with the retention of control over the disposition of the allotted lands, was expressly decided in the case of *Tiger* v. *Western Investment Co., supra,* in which the conclusions of the court were thus stated (p. 316):

"Conceding that Marchie Tiger by the act conferring citizenship obtained a status which gave him certain civil and political rights, inhering in the privileges and immunities of such citizenship unnecessary to here discuss, he was still a ward of the Nation so far as the alienation of these lands was concerned, and a member of the existing Creek Nation. . . . Upon the matters involved our conclusions are that Congress has had at all times, and now has, the right to pass legislation in the interest of the Indians as a dependent people; that there is nothing in

citizenship incompatible with this guardianship over the Indian's lands inherited from allottees as shown in this case; that in the present case when the act of 1906 was passed, the Congress had not released its control over the alienation of lands of full-blood Indians of the Creek Nation; that it was within the power of Congress to continue to restrict alienation by requiring, as to full-blood Indians, the consent of the Secretary of the Interior to a proposed alienation of lands such as are involved in this case; that it rests with Congress to determine when its guardianship shall cease, and while it still continues it has the right to vary its restrictions upon alienation of Indian lands in the promotion of what it deems the best interest of the Indian."

During the continuance of this guardianship, the right and duty of the Nation to enforce by all appropriate means the restrictions designed for the security of the Indians cannot be gainsaid. While relating to the welfare of the Indians, the maintenance of the limitations which Congress has prescribed as a part of its plan of distribution is distinctly an interest of the United States. A review of its dealings with the tribes permits no other conclusion. Out of its peculiar relation to these dependent peoples sprang obligations to the fulfillment of which the national honor has been committed. "From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen." *United States* v. *Kagama*, 118 U. S. 375, 384.

This national interest is not to be expressed in terms of property, or to be limited to the assertion of rights incident to the ownership of a reversion or to the holding of a technical title in trust. When, in 1838, patent was issued

to the Cherokees providing that it was subject to the condition that the granted lands should revert to the United States if the Cherokee Nation became extinct or abandoned them, neither the rights nor the duties of the United States were confined to the reversionary interest thus secured. And its relinquishment made it no less a matter of national concern that the restrictions designed to protect the Indian allottees should be enforced. But this object could not be accomplished if the enforcement were left to the Indians themselves. It is no answer to say that conveyances obtained in violation of restrictions would be void. That, of course, is true, and yet, by means of the conveyances and the consequent assertion of rights of ownership by the grantees, the Indians might be deprived of the practical benefits of their allotments. It was the intent of Congress that, for their sustenance and as a fitting aid to their progress, they should be secure in their possession during the period specified and should actually hold and enjoy the allotted lands. As was well said by the court below, "If they are unable to resist the allurements by which they are enticed into making the conveyances, will they be expected to undertake the difficult and protracted litigation necessary to set aside their own acts? To ask these questions is to answer them. Congress intended that both the Indians and the members of the white race should obey its limitations. A transfer of the allotments is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States. If these Indians may be divested of their lands, they will be thrown back upon the Nation a pauperized, discontented and, possibly, belligerent people." The authority to enforce restrictions of this character is the necessary complement of the power to impose them.

Whether these restrictions upon the alienation of the allotted lands had been violated and the alleged convey-

ances were void, was a justiciable question; and in order that it might properly discharge its duty, and that it might obtain adequate relief, suited to the nature of the case in accordance with the principles of equity, the United States was entitled to invoke the equity jurisdiction of its courts. It was not essential that it should have a pecuniary interest in the controversy. In *United States* v. *American Bell Telephone Co.*, 128 U. S. 315, 367, where the suit was brought to obtain the cancellation of certain patents, this court in commenting upon the statements which had been made in the case of *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273, with respect to the right of the United States to sue, said: "This language is construed by counsel for the appellee in this case to limit the relief granted at the instance of the United States to cases in which it has a direct pecuniary interest. But it is not susceptible of such construction. It was evidently in the mind of the court that the case before it was one where the property right to the land in controversy was the matter of importance, but it was careful to say that the cases in which the instrumentality of the court cannot thus be used are those where the United States has no pecuniary interest in the remedy sought, and is also under no obligation to the party who will be benefited to sustain an action for his use, and also where it does not appear that any obligation existed on the part of the United States to the public or to any individual. The essence of the right of the United States to interfere in the present case is its obligation to protect the public from the monopoly of the patent which was procured by fraud, and it would be difficult to find language more aptly used to include this in the class of cases which are not excluded from the jurisdiction of the court by want of interest in the government of the United States. It is insisted that these decisions have reference exclusively to patents for land, and that they are not applicable to patents for inventions and discoveries. The

argument very largely urged for that view is the one just stated, that in the cases which had reference to patents for land the pecuniary interest of the United States was the foundation of the jurisdiction. This, however, is repelled by the language just cited, and by the fact that in more than one of the cases, notably in *United States* v. *Hughes*, *supra*, [11 How. 552], the right of the government to sustain the suit was based upon its legal or moral obligation to give a good title to another party who had a prior and a better claim to the land, but whose right was obstructed by the patent issued by the United States."

And in *In re Debs*, 158 U. S. 564, where the question was as to the jurisdiction of a court of equity at the suit of the Government to enjoin interference with the transportation of the mails, the court, while adverting to the fact that the United States had a property in the mails, declined to place its decision upon that ground alone, and rested it also upon governmental duty. The court said (pp. 584, 586): "Every government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. . . . The national government, given by the Constitution power to regulate interstate commerce, has by express statute assumed jurisdiction over such commerce when carried upon railroads. It is charged, therefore, with the duty of keeping those highways of interstate commerce free from obstruction, for it has always been recognized as one of the powers and duties of a government to remove obstructions from the highways under its control."

In *United States* v. *Rickert*, 188 U. S. 432, the suit was brought to restrain the collection of certain county taxes alleged to be due in respect of permanent improvements

on, and personal property used in the cultivation of, lands occupied by Sioux Indians in South Dakota. The lands had been allotted under the general allotment act of February 8, 1887, 24 Stat. 389. One of the questions certified to this court was whether the United States had such an interest in the controversy or in its subjects as entitled it to maintain the suit; and the question was answered in the affirmative. It is true that, in that case, the statute provided that the United States should hold the land allotted for twenty-five years in trust for the sole use and benefit of the Indian allottee. But the decision rested upon a broader foundation than the mere holding of a legal title to land in trust, and embraced the recognition of the interest of the United States in securing immunity to the Indians from taxation conflicting with the measures it had adopted for their protection. The court said (p. 444): "In view of the relation of the United States to the real and personal property in question, as well as to these dependent Indians still under national control, and in view of the injurious effect of the assessment and taxation complained of upon the plans of the Government with reference to the Indians, it is clear that the United States is entitled to maintain this suit." By the act of August 15, 1894, c. 290, 28 Stat. 286, 305, as amended by the act of February 6, 1901, c. 217, 31 Stat. 760, Congress authorized suits to be brought against the United States, in its Circuit Courts, "involving the right of any person, in whole or in part of Indian blood or descent" (with certain exceptions) "to any allotment of lands under any law or treaty." *Sloan* v. *United States*, 193 U. S. 614. Prior to the amendment of 1901, the United States could not be sued in such a case. But the amendment required that "in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant." Commenting upon this, the court said in *McKay* v. *Kalyton*, 204 U. S. 458, 469: "Nothing could more clearly

demonstrate, than does this requirement, the conception of Congress that the United States continued as trustee to have an active interest in the proper disposition of allotted Indian lands and the necessity of its being made a party to controversies concerning the same, for the purpose of securing a harmonious and uniform operation of the legislation of Congress on the subject." And *In Matter of Heff*, 197 U. S. 488, 509, this court said: "In *United States* v. *Rickert*, 188 U. S. 432, we sustained the right of the Government to protect the lands thus allotted and patented from any encumbrance of state taxation. Undoubtedly an allottee can enforce his right to an interest in the tribal or other property (for that right is expressly granted) and equally clear is it that Congress may enforce and protect any condition which it attaches to any of its grants. This it may do by appropriate proceedings in either a National or a state court."

Not only was the United States entitled to prosecute this suit by virtue of the interest springing from its peculiar relations to the Indians and the course of dealing which had finally led to the plan of separate allotments accompanied by restrictions for the protection of the allottees, but Congress has explicitly recognized the right of the Government thus to enforce these restrictions and has made appropriations for the maintenance of suits of this description. And, at least, the power of Congress to authorize the Government to sue, in view of the relation of the United States to the subject-matter and of the nature of the question to be determined, cannot be doubted. *Minnesota* v. *Hitchcock*, 185 U. S. 373, 387, 388.

By the act of May 27, 1908, c. 199, 35 Stat. 312, which defined restrictions with respect to allotments to members of the Five Civilized Tribes, the representatives of the Secretary of the Interior were authorized to advise all allottees, having restricted lands, of their rights, and at the request of any such allottee to bring suit in his name

to cancel any conveyance or incumbrance in violation of the act and to take all steps necessary to assist the allottees in acquiring and retaining possession. But the following provision was added (p. 314):

"Nothing in this act shall be construed as a denial of the right of the United States to take such steps as may be necessary, including the bringing of any suit and the prosecution and appeal thereof, to acquire or retain possession of restricted Indian lands, or to remove cloud therefrom, or clear title to the same, in cases where deeds, leases or contracts of any other kind or character whatsoever have been or shall be made contrary to law with respect to such lands prior to the removal therefrom of restrictions upon the alienation thereof; such suits to be brought on the recommendation of the Secretary of the Interior, without costs or charges to the allottees, the necessary expenses incurred in so doing to be defrayed from the money appropriated by this act."

It is urged that this clause did not confer authority to sue, but was inserted merely to rebut any possible inference of an intention to deny this right to the United States. This seems to us a strained construction in view of the obvious purpose of the act. And it fails to give adequate effect to the words "such suits *to be brought* on the recommendation of the Secretary of the Interior, without costs or charges to the allottees, *the necessary expenses incurred in so doing to be defrayed from the money appropriated by this act.*" In addition to the appropriation of moneys for expenditure under the direction of the Secretary of the Interior, that act appropriated the sum of $50,000 "to be immediately available and available until expended as the Attorney General may direct," which was "to be used in the payment of necessary expenses incident to any suits brought at the request of the Secretary of the Interior in the eastern judicial district of Oklahoma;" with the proviso that $10,000 of this amount,

or so much as might be necessary, should be expended in the prosecution of cases in the western judicial district of that State. In 1909 (act of March 4, 1909, c. 299, 35 Stat. 945, 1014), a further appropriation of a like sum for the same purposes was made under the heading "Suits to set aside conveyances of allotted lands." Another appropriation was made in 1910 (act of June 25, 1910, c. 384, 36 Stat. 703, 748), under a similar heading with specific reference to the "Five Civilized Tribes," and also with the provision "and not to exceed ten thousand dollars of said sum shall be available for the expenses of the United States on appeals to the Supreme Court of the United States;" and still another to the same effect in 1911 (act of March 4, 1911, c. 285, 36 Stat. 1363, 1425).

We conclude that the United States has the capacity to prosecute this suit.

It is further urged that there is a defect of parties, on account of the absence of the Indian grantors. It is said that they are the owners of the lands and hence sustain such a relation to the controversy that final decree cannot be made without affecting their interest. *Shields* v. *Barrow*, 17 How. 130, 139; *Williams* v. *Bankhead*, 19 Wall. 563.

The argument necessarily proceeds upon the assumption that the representation of these Indians by the United States is of an incomplete or inadequate character; that although the United States, by virtue of the guardianship it has retained, is prosecuting this suit for the purpose of enforcing the restrictions Congress has imposed, and of thus securing possession to the Indians, their presence as parties to the suit is essential to their protection. This position is wholly untenable. There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents—whom Congress, with respect to the restricted lands, has not yet released from tutelage. Its efficacy does not

depend upon the Indian's acquiescence. It does not rest upon convention, nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty.

When the United States instituted this suit, it undertook to represent, and did represent, the Indian grantors whose conveyances it sought to cancel. It was not necessary to make these grantors parties, for the Government was in court on their behalf. Their presence as parties could not add to, or detract from, the effect of the proceedings to determine the violation of the restrictions and the consequent invalidity of the conveyances. As by the act of Congress they were precluded from alienating their lands, they were likewise precluded from taking any position in the legal proceedings instituted by the Government to enforce the restrictions which would render such proceedings ineffectual or give support to the prohibited acts. The cause could not be dismissed upon their consent; they could not compromise it; nor could they assume any attitude with respect to their interest which would derogate from its complete representation by the United States. This is involved necessarily in the conclusion that the United States is entitled to sue, and in the nature and purpose of the suit.

These considerations also dispose of the contention that by reason of the absence of the grantors as parties, the grantees are placed in danger of double litigation; so that if they should succeed here they would still be exposed to suit by the allottees. It is not pertinent to comment upon the improbability of the contingency, if it exists in legal contemplation. But if the United States, representing the owners of restricted lands, is entitled to bring a suit of this character, it must follow that the

decree will bind not only the United States, but the Indians whom it represents in the litigation. This consequence is involved in the representation. *Kerrison* v. *Stewart*, 93 U. S. 155, 160; *Shaw* v. *Railroad Co.*, 100 U. S. 605, 611; *Beals* v. *Ill. &c. R. R. Co.*, 133 U. S. 290, 295. And it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its courts to cancel conveyances in violation of the restrictions prescribed by Congress, these wards should themselves be permitted to relitigate the question.

In what cases the United States will undertake to represent Indian owners of restricted lands in suits of this sort is left under the acts of Congress to the discretion of the Executive Department. The allottee may be permitted to bring his own action, or if so brought the United States may aid him in its conduct, as in the *Tiger Case*. And, as already noted, the act of May 27, 1908, makes provision for proceedings by the representatives of the Secretary of the Interior in the name of the allottee. But in the opportunities thus afforded there is no room for the vexation of repeated litigation of the same controversy. And when the United States itself undertakes to represent the allottees of lands under restriction and brings suit to cancel prohibited transfers, such action necessarily precludes the prosecution by the allottees of any other suit for a similar purpose relating to the same property.

It is said that the allottees have received the consideration and should be made parties in order that equitable restoration may be enforced. Where, however, conveyance has been made in violation of the restrictions, it is plain that the return of the consideration cannot be regarded as an essential prerequisite to a decree of cancellation. Otherwise, if the Indian grantor had squandered the money, he would lose the land which Congress intended he should hold, and the very incompetence and

thriftlessness which were the occasion of the measures for his protection would render them of no avail. The effectiveness of the acts of Congress is not thus to be destroyed. The restrictions were set forth in public laws, and were matters of general knowledge. Those who dealt with the Indians contrary to these provisions are not entitled to insist that they should keep the land if the purchase price is not repaid, and thus frustrate the policy of the statute. *United States* v. *Trinidad Coal Co.*, 137 U. S. 160, 170, 171.

But it is suggested that there may be instances where the consideration could be restored without interfering with the policy which prohibited the transfer; that is, without in any way impairing the right to the recovery of the land or the assurance to the Indian of his possession free from incumbrance. It is said, for example, that there may have been an exchange of lands, and that the Indian grantor should not, on retaking the restricted lands, be permitted at the same time to retain those which he has received from the grantee. Or there may be other property held by the Indian grantor free from restrictions, so that restoration of the consideration may be enforced without working a deprivation of the restricted lands contrary to the act of Congress. We need not attempt to surmise what cases of this sort may arise. It is sufficient to say that no such case is here presented. It is not presented by the mere allegation of the bill that the conveyances assailed purport to have been made for pecuniary consideration. It will be competent for the court, on a proper showing as to any of the transactions that provision can be made for a return of the consideration, consistently with the cancellation of the conveyances and with securing to the allottees the possession of the restricted lands in accordance with the statute, to provide for bringing in as a party to the suit any person whose presence for that purpose is found to be necessary.

A further objection is that the bill is multifarious. But in view of the numerous transfers which the Government attacks, it was manifestly in the interest of the convenient administration of justice that unnecessary suits should be avoided and that transactions presenting the same question for determination should be grouped in a single proceeding. The objection to the misjoinder of causes of action is likewise without merit.

Our conclusion is that the suit was well brought. The judgment of the court below is affirmed with the modification that the cause shall proceed in conformity with this opinion.

*It is so ordered.*

MR. JUSTICE LURTON dissents on the question of jurisdiction, but not on the merits.

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## MULLEN *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 404. Argued October 12, 13, 1911.—Decided April 15, 1912.

The relations of the United States and the Choctaw Indians by treaties and statutes in regard to the allotment of lands and the restriction of alienation reviewed, and *held* that where a person, whose name appeared upon the rolls of the Choctaw Indians, died after the ratification of the agreement of distribution and before receiving the allotment, there was no provision for restriction but the land passed at once to his heirs; in such cases the United States cannot maintain an action to set aside conveyances made by the heirs within the period of restriction applicable to homestead allotments made to members of the tribe during life.

179 Fed. Rep. 13, reversed as to this point.

THE facts, which involve the validity of certain conveyances of allotted land made by Choctaw Indians and also the right of the United States to have such conveyances set aside, are stated in the opinion.

*Mr. J. C. Stone, Mr. Robert J. Boone* and *Mr. S. T. Bledsoe*, with whom *Mr. J. R. Cottingham* was on the brief, for appellants.[1]

*The Solicitor General* and *Mr. A. N. Frost* and *Mr. Harlow A. Leekley*, Special Assistants to the Attorney General, for the United States.[1]

MR. JUSTICE HUGHES delivered the opinion of the court.

This suit was brought by the United States to cancel certain conveyances of allotted lands, made by Choctaw Indians in alleged violation of restrictions. The Circuit Court sustained a demurrer to the bill upon the grounds that the United States was not entitled to maintain a suit of this character; that there was a defect of parties, owing to the absence of the Indian grantors, and that the bill was multifarious. This judgment was reversed by the Circuit Court of Appeals, which directed the trial court to proceed with the cause in accordance with its opinion. *United States* v. *Allen, and similar cases*, 179 Fed. Rep. 13. An appeal to this court is taken by certain defendants under § 3 of the act of June 25, 1910, c. 408, 36 Stat. 837. The lands, conveyed to the appellants, are described as those which had been allotted to Choctaws of the full-blood, deceased, and the conveyances were made by their heirs (also Choctaws of the full-blood) prior to April 26, 1906.

As early as 1786 (January 3) a treaty was made with the representatives of the Choctaws by which it was acknowledged that these Indians were under the protection

[1] See abstract of arguments in *Heckman* v. *United States*, *ante*, p. 413.

of the United States and it was provided that for their "benefit and comfort" and for the "prevention of injuries and oppressions" the United States should have "the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they think proper." 7 Stat. 21. By the treaty of 1820 (October 18) in order "to promote the civilization of the Choctaw Indians, by the establishment of schools amongst them; and to perpetuate them as a nation, by exchanging, for a small part of their land here, a country beyond the Mississippi River, where all, who live by hunting and will not work, may be collected and settled together," there was ceded to the Choctaws a tract west of the Mississippi situated between the Arkansas and Red rivers. 7 Stat. 210. In furtherance of this purpose, another treaty was made in 1830 (September 27) by which it was agreed that the United States should "cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it," and the Choctaws ceded to the United States all their lands east of the Mississippi and promised to remove beyond that river as soon as possible. 7 Stat. 333, 334. In 1837 (January 17), with the approval of the President and Senate of the United States, an agreement was made between the Choctaws and the Chickasaws that the latter should have the privilege of forming a district within the limits of the Choctaw country "to be held on the same terms that the Choctaws now hold it, except the right of disposing of it, which is held in common with the Choctaws and Chickasaws, to be called the Chickasaw district of the Choctaw Nation." 11 Stat. 573. Controversies having arisen between these tribes, a treaty was made in 1855 (June 22) with the representatives of both, defining boundaries and providing for the settlement of differences. This contained the stipulation: "And pursuant to an act

of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits, to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however,* no part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs become extinct, or abandon the same." 11 Stat. 612. After the Civil War, a new treaty was entered into reaffirming the obligations arising out of prior agreements and legislation. April 28, 1866, 14 Stat. 765, 774. While this treaty contemplated allotments in severalty and made provision to that end, effective action was not taken until the legislation of 1893, and subsequent years, relating to the Five Civilized Tribes, which embodied the policy—of individual allotments and the dissolution of the tribal governments—made necessary by the changed conditions in the Indian country. Acts of March 3, 1893, c. 209, 27 Stat. 645; June 10, 1896, c. 398, 29 Stat. 321, 339; June 7, 1897, c. 3, 30 Stat. 62, 64; June 28, 1898, c. 517, 30 Stat. 495.

In the case of the Choctaws and Chickasaws, as in that of the other tribes, the scheme of allotments embraced certain restrictions upon the right of alienation which Congress deemed necessary for the suitable protection of the allottees. By virtue of the relation of the United States to these Indians (*Choctaw Nation* v. *United States,* 119 U. S. 1, 28; *United States* v. *Choctaw Nation and Chickasaw Nation,* 179 U. S. 494, 532), and the obligations it has assumed, it is entitled to invoke the equity jurisdiction of its courts for the purpose of enforcing these restrictions. The Indian grantors, being represented by the Government, were not necessary parties, and in the interest of the convenient administration of justice it was competent to

embrace in one suit a class of transactions presenting the same question for determination. *Heckman* v. *United States, ante*, p. 413.

The question remains whether, in the execution of the conveyances to the appellants, the restrictions imposed by Congress have been violated.

The Dawes Commission, constituted by the act of 1893, entered into an agreement with the Choctaws and Chickasaws—known as the Atoka agreement—which was approved by Congress and incorporated in § 29 of the act of June 28, 1898. 30 Stat. 505. There was, however, a supplemental agreement, found in the act of July 1, 1902, 32 Stat. 641, c. 1362, which contains the restrictions in force at the time of the conveyances described in the bill.

This supplemental agreement provided that there should be allotted to each member of the Choctaw and Chickasaw tribes land equal in value to 320 acres of the average allottable land of these tribes; and to each Choctaw and Chickasaw freedman, land equal in value to forty acres. The scheme defined two classes of cases, (1) allotments made to members of the tribes, and to freedmen, living at the time of allotment, and (2) allotments made in the case of those whose names appeared upon the tribal rolls but who had died after the ratification of the agreement and before the actual allotment had been made.

With respect to allotments to living members, it was provided that the allottee should designate 160 acres of the allotted lands as a homestead, for which separate certificate and patent should issue. And the restrictions upon the right of alienation of the allotted lands are found in paragraphs 12, 13, 15 and 16 of the supplemental agreement, as follows:

"12. Each member of said tribes shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to one hundred

and sixty acres of the average allottable land of the Choctaw and Chickasaw nations, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment, and separate certificate and patent shall issue for said homestead.

"13. The allotment of each Choctaw and Chickasaw freedman shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment.

"15. Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this Act, nor shall said lands be sold except as herein provided.

"16. All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent; *Provided*, That such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value."

It will be observed that the homestead lands are made inalienable "during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment." The period of restriction is thus definitely limited, and the clear implication is that when the prescribed period expired the lands were to become alienable; that is, by the heirs of the allottee upon his death, or by the allottee himself at the end of the twenty-one years. Thus, with respect to homestead lands, the supplemental agreement imposed no restriction upon alienation by the heirs of a deceased allottee. And the reason may be found in the fact that each member of the tribes—each minor child

as well as each adult, duly enrolled as required—was to have his or her allotment; so that each member was already provided with a homestead as a part of the allotment, independently of the lands which might be acquired by descent. On the other hand, the proviso of paragraph 16—which relates to the additional portion of the allotment, or the so-called "surplus" lands—contains a restriction upon alienation not only by the allottee, but by his heirs. Whatever may have been the purpose, a distinction was thus made with regard to the disposition by heirs of the homestead and surplus lands respectively.

The question now presented—with regard to the conveyances made to the appellants—arises in the second class of cases, that is, where a person whose name appeared upon the rolls died after the ratification of the agreement and before receiving his allotment. In this event, provision was made for allotment in the name of the deceased person, and for the descent of the lands to his heirs. This is contained in paragraph 22 of the supplemental agreement:

"22. If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement and before receiving his allotment of land the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: *Provided*, That the allotment thus to be made shall be selected by a duly appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and practicable time, the Commission to the Five Civilized Tribes shall designate the lands thus to be allotted."

In the cases falling within this paragraph, there is no requirement for the selection of any portion of the allotted lands as a homestead, and there is no ground for supposing that it was the intention of Congress that a provision for such selection should be read into the paragraph so as to assimilate it to paragraph 12 relating to allotments to living members. While the lands were to be allotted in the name of the deceased allottee, they passed at once to his heirs, and as each heir, if a member of the tribe, was already supplied with his homestead of 160 acres, there was no occasion for a further selection for that purpose from the inherited lands. No distinction is made between the heirs; they might or might not be members of the tribe, and where there were a number of heirs each would take his undivided share. It is quite evident that there is no basis for implying the requirement that in such case there should be a selection of a portion of the allotment as a homestead, and all the lands allotted under paragraph 22 are plainly upon the same footing. While it appears from the record that, in the present case, separate certificates of allotment were issued for homestead and surplus lands, this was without the sanction of the statute.

In the agreement with the Creek Indians (act of March 1, 1901, 31 Stat. 861, 870, c. 676) it was provided that in the case of the death of a citizen of the tribe after his name had been placed upon the tribal roll made by the Commission, and before receiving his allotment, the lands and money to which he would have been entitled, if living, should descend to his heirs "and be allotted and distributed to them accordingly." The question arose whether in such cases there should be a designation of a portion of the allotment as a homestead. In an opinion under date of March 16, 1903, the then Assistant Attorney General for the Interior Department (Mr. Van Devanter) advised the Secretary of the Interior that this was not required by the statute. He said: "After a careful con-

sideration of the provisions of law pertinent to the question presented, and of the views of the Commissioner of Indian Affairs and the Commission to the Five Civilized Tribes, I agree with the latter that in all cases where allotment is made directly to an enrolled citizen, it is necessary that a homestead be selected therefrom and conveyed to him by separate deed, but that where the allotment is made directly to the heirs of a deceased citizen there is no reason or necessity for designating a homestead out of such lands or of giving the heirs a separate deed for any portion of the allotment, and therefore advise the adoption of that rule." It is true that under the Creek agreement, in cases where the ancestor died before allotment, the lands were to be allotted directly to the heirs, while under the Choctaw and Chickasaw agreement the allotment was to be made in the *name* of the deceased member and "descend to his heirs." This, however, is a merely formal distinction and implies no difference in substance. In both cases the lands were to go immediately to the heirs and the mere circumstance that under the language of the statute the allotment was to be made in the name of the deceased ancestor instead of the names of the heirs furnishes no reason for implying a requirement that there should be a designation of a portion of the lands as homestead.

We have, then, a case where all the allotted lands going to the heirs are of the same character and there is no restriction upon the right of alienation expressed in the statute. Had the lands been allotted in the lifetime of the ancestor, one-half of them, constituting homestead, would have been free from restriction upon his death. The only difficulty springs from the language of paragraph 16, limiting the right of heirs to sell "surplus" lands. But, on examining the context, it appears that this provision is part of the scheme for allotments to living members, where there is a segregation of homestead and surplus lands

respectively. Whatever the policy of such a distinction which gives a greater freedom for the disposition by heirs of homestead lands than of the additional lands, there is no warrant for importing it into paragraph 22 where there is no such segregation. It would be manifestly inappropriate to imply the restriction in such cases so as to make it applicable to all the lands taken by the heirs, and there is no occasion, or authority, for creating a division of the lands so as to impose a restriction upon a part of them.

There being no restriction upon the right of alienation, the heirs in the cases involved in this appeal were entitled to make the conveyances. The bill alleged that the tracts embraced in these conveyances were "allotted lands," and certificates of allotment had been issued. These Indian heirs were vested with an interest in the property which in the absence of any provision to the contrary was the subject of sale. The fact that they were "full-blood" Indians makes no difference in this case for, at the time of the conveyances in question, heirs of the full-blood taking under the provisions of paragraph 22 of the supplemental agreement had the same right of alienation as other heirs.

It does not appear from the allegations of the bill whether patents for the lands had been issued to the Indian grantors before the conveyances were made. But as the lands had been duly allotted, the right to patent was established; and there was no restriction in cases under paragraph 22 upon alienation of the lands prior to the date of patent. There was undoubtedly a complete equitable interest which, in the absence of restriction, the owner could convey. *Doe* v. *Wilson*, 23 How. 457; *Crews* v. *Burcham*, 1 Black, 352; *Jones* v. *Meehan*, 175 U. S. 1, 15–18. And any contention that the conveyances were invalid, solely because they were made before the issuance of patent—the lands not being under restriction—would be met by the proviso contained in § 19 of the act of

April 26, 1906, 34 Stat. 137, 144, c. 1876: "*Provided further*, That conveyances heretofore made by members of any of the Five Civilized Tribes subsequent to the selection of allotment and subsequent to removal of restriction, where patents thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording or delivery of patent or deed; but this shall not be held or construed as affecting the validity or invalidity of any such conveyance, except as hereinabove provided; and every deed executed before, or for the making of which a contract or agreement was entered into before the removal of restrictions, be and the same is hereby, declared void."

We are therefore of the opinion that the bill is without equity as against the appellants for the reason that the conveyances were not executed in violation of any restrictions imposed by Congress, and that the demurrer should have been sustained upon this ground. It follows that, with respect to the appellants, the decree of the Circuit Court of Appeals must be reversed and that of the Circuit Court affirmed.

*It is so ordered.*

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## GOAT *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 405. Argued October 12, 13, 1911.—Decided April 29, 1912.

*Heckman* v. *United States*, *ante*, p. 413, followed to effect that the United States has capacity to maintain a suit in equity to set aside conveyances of allotted lands made by allottee Indians in violation of statutory restrictions.

The question in this case is: What are the restrictions in the case of allotments to Seminole freedmen?

The relations of the United States to Seminole freedmen by treaties and statutes reviewed, and *held* that the United States is entitled to maintain an action to set aside all conveyances made by Seminole freedmen of homestead lands, of surplus lands made by minor allottees, and by adult allottees if made prior to April 21, 1904; but that such an action cannot be maintained as to conveyances made by adult allottees after April 21, 1904.
179 Fed. Rep. 13, modified and affirmed as to this point.

THE facts, which involve the validity of certain conveyances of allotted lands made by Seminole Indians and also the right of the United States to have such conveyances set aside, are stated in the opinion.

*Mr. J. C. Stone*, *Mr. Robert J. Boone* and *Mr. S. T. Bledsoe*, with whom *Mr. Geo. C. Crump*, *Mr. H. H. Rogers*, *Mr. J. H. Maxey*, *Mr. J. H. Miley* and *Mr. B. B. Blakeney* were on the brief, for appellants.[1]

*The Solicitor General* and *Mr. A. N. Frost* and *Mr. Harlow A. Leekley*, Special Assistants to the Attorney General, for the United States.[1]

MR. JUSTICE HUGHES delivered the opinion of the court.

The question presented by this appeal is with respect to the right of Seminole freedmen to convey the lands allotted to them in severalty pursuant to the act of July 1, 1898, c. 542, 30 Stat. 567. The United States sued to cancel conveyances alleged to have been made contrary to the statute. Demurrer to the bill was sustained by the Circuit Court, and its judgment was reversed by the Circuit Court of Appeals. *United States* v. *Allen, and similar cases*, 179 Fed. Rep. 13. So far as the demurrer contested the capacity of the United States to bring a suit of this character, the case stands upon the same footing, in all

[1] See abstract of arguments in *Heckman* v. *United States*, *ante*, p. 413.

material respects, as that of *Heckman* v. *United States*, *ante*, p. 413, and the right of the United States to enforce such restrictions as may have been imposed upon the alienation of the allotted lands is no longer open to dispute.

The inquiry must be, What are the restrictions in the case of allotments to Seminole freedmen, and have they been violated?

As to each of the tracts of land in question, it was alleged:

"And your orator further shows that each of the tracts of land hereinafter, in paragraph numbered six, described is situated in the Eastern District of Oklahoma, and was, at the time of the transactions of sale or incumbrance mentioned in that paragraph, allotted lands of the members of the Seminole tribe of Indians, allotted to freedman members of said tribe, and none were lands which had been patented to individuals at the time of the transactions in question; that they were not lands of heirs of allottees; that all contracts for the sale, disposition of any of said allotments prior to the date of patent were expressly, declared by law, to be void; that this law applied to all allotments of Seminole lands not inherited from allottees; that accordingly, defendants had knowledge and were, by said law, put upon inquiry and notice as to the inalienability of said unpatented lands, and had notice accordingly that the particular tracts had not been patented, any such patenting being a matter of public record and of public action; that moreover, the unpatented condition of said allotted lands was notorious and of common knowledge, since none of the Seminole allotted lands have been patented; and that other public laws of Congress and public agreements imposed further restrictions upon the transfer and incumbrance of the particular lands herein, in paragraph six, described, belonging to the particular class of tribal members herein

mentioned, in addition to those arising from the absence of patenting, and these restrictions were known, notified and notorious in like manner."

While it appears that a large number of conveyances are involved in the suit, only two are specifically described in the printed record on this appeal, the descriptions of the others, as set forth in the bill, having been omitted by stipulation. In the two cases particularly mentioned, the conveyances were made in August, 1906, and March, 1907. It is not stated whether the lands, embraced therein, were homestead or so-called "surplus" lands, but it is conceded in argument that they were of the latter class. The Government says in its brief: "In the printed record it happens that the transactions set out include only lands allotted other than homestead, but other transactions complained of in the bill, omitted from the printed record for the sake of brevity, include lands allotted as homesteads as well." The broad ground is taken by the Government that all conveyances of the lands allotted to members of the Seminole tribe are void because made prior to the date of patent.

By the treaty of 1832 (7 Stat. 368) the Seminoles relinquished to the United States their claim to the lands then occupied in the territory of Florida and agreed to emigrate to the lands assigned to the Creeks west of the Mississippi, it being understood that an additional extent of territory proportioned to their numbers should "be added to the Creek country," and that they should be received "as a constituent part of the Creek Nation." Provision to this effect was made in the Creek treaty of 1833 (7 Stat. 417, 419), which was satisfactory to the Seminoles, and territory was assigned to them accordingly. 7 Stat. 423. There were further agreements in 1845 (9 Stat. 821) and in 1856 (11 Stat. 699). In 1866 (14 Stat. 755), lands which had been ceded to the Seminoles by the Creeks were conveyed to the United States at a stipulated price;

and the United States, having obtained from the Creeks the westerly half of their lands, granted to the Seminoles a tract of 200,000 acres, which was to constitute the national domain of the latter. Subsequently, the United States purchased for the Seminoles another tract, on the east, consisting of 175,000 acres. Acts of March 3, 1873, 17 Stat. 626; August 5, 1882, 22 Stat. 257, 265, c. 390. It was provided in the treaty of 1866, inasmuch as there were among the Seminoles "many persons of African descent and blood, who have no interest or property in the soil and no recognized civil rights," that "these persons and their descendants, and such other of the same race as shall be permitted by said nation to settle there, shall have and enjoy all the rights of native citizens, and the laws of said nation shall be equally binding upon all persons of whatever race or color who may be adopted as citizens or members of said tribe."

Pursuant to the policy of allotting tribal lands among the individual members of the Five Civilized Tribes (act of March 3, 1893, c. 209, 27 Stat. 645), an agreement was made by the Dawes Commission with the Seminoles on December 16, 1897, which was ratified by the act of July 1, 1898. This agreement provided (30 Stat. 567, c. 542):

"All lands belonging to the Seminole tribe of Indians shall be divided into three classes, designated as first, second, and third class; the first class to be appraised at five dollars, the second class at two dollars and fifty cents, and the third class at one dollar and twenty-five cents per acre, and the same shall be divided among the members of the tribe so that each shall have an equal share thereof in value, so far as may be, the location and fertility of the soil considered; giving to each the right to select his allotment so as to include any improvements thereon, owned by him at the time; and each allottee shall have the sole right of occupancy of the land so allotted to him,

during the existence of the present tribal government, and until the members of said tribe shall have become citizens of the United States. Such allotment shall be made under the direction and supervision of the Commission to the Five Civilized Tribes in connection with a representative appointed by the tribal government; and the chairman of said Commission shall execute and deliver to each allottee a certificate describing therein the land allotted to him.

"All contracts for sale, disposition, or encumbrance of any part of any allotment made prior to date of patent shall be void."

Leases by allottees were permitted upon certain conditions.

The deeds of the allotted lands were to be executed at the termination of the tribal government and each allottee was to designate forty acres which by the terms of the deed should be inalienable and nontaxable as a homestead in perpetuity. The provision on this subject was as follows:

"When the tribal government shall cease to exist the principal chief last elected by said tribe shall execute, under his hand and the seal of the Nation, and deliver to each allottee a deed conveying to him all the right, title, and interest of the said Nation and the members thereof in and to the lands so allotted to him, and the Secretary of the Interior shall approve such deed, and the same shall thereupon operate as relinquishment of the right, title, and interest of the United States in and to the land embraced in said conveyance, and as a guarantee by the United States of the title of said lands to the allottee; and the acceptance of such deed by the allottee shall be a relinquishment of his title to and interest in all other lands belonging to the tribe, except such as may have been excepted from allotment and held in common for other purposes. Each allottee shall designate one tract of

forty acres, which shall, by the terms of the deed, be made inalienable and nontaxable as a homestead in perpetuity."

A supplemental agreement was made with the Seminoles on October 7, 1899, ratified on June 2, 1900 (31 Stat. 250, c. 610), which provided for the enrollment of children born to Seminole citizens to and including December 31, 1899, and all Seminole citizens then living, and also that if any member of the tribe should die after that date the lands, money and other property to which he would be entitled if living should descend to his heirs.

The act of March 3, 1903, c. 994, § 8 (32 Stat. 982, 1008), contained the following provisions as to the duration of the tribal government, the execution, delivery and recording of deeds and the inalienability of homesteads:

"SEC. 8. That the tribal government of the Seminole Nation shall not continue longer than March fourth, nineteen hundred and six: *Provided*, That the Secretary of the Interior shall at the proper time furnish the principal chief with blank deeds necessary for all conveyances mentioned in the agreement with the Seminole Nation contained in the Act of July first, eighteen hundred and ninety-eight (Thirtieth Statutes, page five hundred and sixty-seven), and said principal chief shall execute and deliver said deeds to the Indian allottees as required by said Act, and the deeds for allotment, when duly executed and approved, shall be recorded in the office of the Dawes Commission prior to delivery and without expense to the allottee until further legislation by Congress, and such records shall have like effect as other public records: *Provided further*, That the homestead referred to in said Act shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the deed for the allotment. A separate deed shall be issued for said homestead, and during the time the same is held by the allottee it shall not be liable for any debt contracted by the owner thereof."

The restriction upon the alienation of homestead lands applied as well to the freedmen as to the other allottees; but it was removed, with respect to the freedmen, by the act of May 27, 1908, c. 199 (35 Stat. 312). This statute, in fixing the status—after sixty days from the date of the act—of the lands of allottees of the Five Civilized Tribes, theretofore or thereafter allotted, provided: "All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors shall be free from all restrictions." The present bill was filed on July 23, 1908, and the conveyances it assails were executed before this provision of the act of 1908 became operative. Previous conveyances were not validated by the statute, but on the contrary it declared any attempted alienation or incumbrance of allotted lands, prior to the removal of restrictions, to be void. Section 5, *Id.* 313. It follows that the instruments described in the bill, in so far as they may have purported to convey homestead lands, were executed in violation of law and the Government was entitled to have them set aside.

The "surplus" lands were embraced in the general restriction contained in the agreement of December 16, 1897, ratified by the act of July 1, 1898, that "all contracts for sale, disposition, or encumbrance of any part of any allotment made prior to date of patent shall be void." Apart from the provisions as to leases, this was the only restriction upon the alienation of surplus lands imposed by that agreement, and no further restriction applicable to the freedmen allottees was placed upon such lands by subsequent statute.

The situation with respect to the Seminole allotments may be briefly stated. The commissioners to the Five Civilized Tribes found little difficulty in preparing the rolls of the Seminoles or in making the allotments. The enrollment following the ratification of the agreement of

1897 was begun in July, 1898, and was finished in August of that year. The rolls containing the additional names, provision for which was made by the supplemental agreement of 1899, were forwarded to the Department in December, 1900, and were approved by the Secretary of the Interior on April 2, 1901. (Reports of Commission to Five Civilized Tribes, 1900, p. 12; 1901, p. 30.) In June, 1901, the commission undertook the making of allotments and this was practically completed at an early date. In their report for 1903 (pp. 36, 37), the commissioners said: "The last annual report of the Commission showed the completion of allotment in the Seminole Nation, save as to the recording of a small number of allotments, and the issuance of certificates therefor, which was finished early in the past year." Subsequently there were additional allotments to after-born children in accordance with the act of March 3, 1905. 33 Stat. 1048, 1071, c. 1479. As already noted, the allottees were to receive their deeds on the expiration of the tribal government which, by the act of 1903, was not to continue longer than March 4, 1906. By joint resolution of March 2, 1906, Congress provided for the continuance of "the tribal existence and the present tribal governments" of the Five Civilized Tribes "in full force and effect for all purposes under existing laws," until all the property of the tribes should be distributed (34 Stat. 822); and by the act of April 26, 1906, they were continued "until otherwise provided by law" (§ 28, 34 Stat. 137, 148, c. 1876). While the duration of the tribal government was thus extended, the last mentioned statute expressly authorized the principal chief of the Seminoles meanwhile, that is, before its termination, to execute deeds to allottees. (Section 6, *Id.* 139.) These deeds, however, had not been delivered at the time of the conveyances in question. None of the lands, says the bill, had been patented to individuals, and they were not lands of heirs of allottees.

It is urged that the time for the issuance of patents was fixed as the fourth of March, 1906, and that in law they will be deemed to have been delivered on that date or within a reasonable time thereafter; that although provision was made for the continuance of the tribal government, there was likewise authority for the delivery of the deeds prior to its termination. The contention that the restriction was thus removed cannot be sustained. The agreement of 1897 did not fix a definite time for the termination of the tribal government, and while the act of 1903 set a limit to its existence, Congress was competent to extend it. This was done, and the mere authorization of the execution of patents before the tribal government ceased to exist, cannot be regarded as a repeal of the explicit provision that contracts for the sale or incumbrance of the allotted lands prior to the date of patent should be void. The one did not override the other; they could stand together.

But, in 1904—after the allotments to the Seminoles had been made—the restrictions upon the alienation by adult allottees of the five civilized tribes, who were not of Indian blood, of lands other than homesteads were removed. The provision was as follows (act of April 21, 1904, c. 1402, 33 Stat. 189, 204):

"And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon the alienation of all other allottees of said tribes, except minors, and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe, upon application to the United States Indian agent at the Union Agency in charge of the Five Civilized Tribes, if said agent is satisfied upon a full investigation of each individual case that such

removal of restrictions is for the best interest of said allottee. The finding of the United States Indian agent and the approval of the Secretary of the Interior shall be in writing and shall be recorded in the same manner as patents for lands are recorded."

This statute undoubtedly applied to allottees of the Seminole Nation, as one of the Five Civilized Tribes, and the enrolled freedmen of that tribe, according to the classification of the commission in making the rolls, fell within the description of allottees "not of Indian blood." The freedmen were persons of African descent—embracing former slaves and their descendants—who had been admitted to the rights of native citizens under the treaty of 1866. (Report of Dawes Commission, 1898, pp. 11, 13.) While the law did not prescribe that a separate roll of freedmen should be made in the case of the Seminoles, the commission in fact made one. As to this they said in their report for 1898 (p. 13), referring to the Seminoles: "Indeed, it is essentially a nation of full-bloods, save as to its colored citizens, who, under treaty provision, are on an equal footing with the citizens by blood. About one-third of the citizens of the Seminole Nation are freedmen, and while the law does not specifically require a separate roll of each of these classes, the commission's data will enable it to so separate them." Accordingly the freedmen in the rolls of the Seminoles, upon which the allotments were based, appear as a class distinct from the citizens by blood. (Final Rolls of Citizens and Freedmen of the Five Civilized Tribes, pp. 615, 627.) And the commissioner to the Five Civilized Tribes in his report for 1908 (p. 7), in stating the total number of the enrolled Seminoles, with the degree of blood of each, gives the number of the citizens of full-blood and of mixed-blood, three-fourths or more, one-half to three-fourths, and less than one-half blood, and then the number of the enrolled freedmen as a separate group. The bill does not allege that the allottees in

question had any Indian blood, but describes them simply as "freedmen members of said tribe," and in the specifications of the conveyances which appear in the record the grantors are named as Seminole freedmen whose names are on the freedmen roll. The import of the allegation, then, is that these grantors were not of Indian blood, and, so far as they were adults, they came within the provision of the act of 1904, removing restrictions upon the alienation of surplus lands.

These adult grantors stood in precisely the same position—after the act of 1904—as though they had received their allotments without any restriction upon their right to alienate the interest thus acquired. It is insisted, however, that this interest was not of such a character as to be susceptible of transfer. This is not a tenable proposition. Stress is laid upon the provision in the agreement of 1897 that each allottee should have "the sole right of occupancy of the land so allotted to him." But it is not to be supposed that by this form of words Congress intended in the case of the Seminoles to provide that, by virtue of the allotment, the member of the tribe should receive an interest of a different nature from that received by allottees of other tribes. The lands were allotted to the members of the tribe in severalty, so that each should have his distinct portion. The allotments constituted their respective shares of the tribal property, set apart to them as such, and while the execution of the deeds was deferred, each had meanwhile a complete equitable interest in the land allotted to him. The nature of the allottee's interest is sufficiently shown by other provisions of the agreement of 1897, as ratified by Congress, and by statutes *in pari materia*. In the agreement it was provided that any allottee might lease his allotment on certain conditions. With respect to the townsite of Wewoka, which was to be controlled and disposed of according to the provisions of the act of the General Council of the

Seminole Nation of April 23, 1897, it was provided that on extinguishment of the tribal government deeds should issue "to owners of lots" as in the case of allottees. The interest of the allottee was a descendible interest. By the supplemental agreement of 1900, in the case of the death of a member of the tribe after December 31, 1899, the lands "to which he would be entitled if living" were to descend to his heirs. Section 5 of the act of April 26, 1906, relating to "patents or deeds to allottees in any of the Five Civilized Tribes" to be thereafter issued—thus including those to be issued to the Seminole allottees—provided that if any such allottee should die before the deed became effective the title to the lands described therein should "inure to and vest in his heirs," and further, that "in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs *or his lawful assigns*, as if the patent or deed had issued to the allottee during his life" (34 Stat. 137, 138, c. 1876); and § 19 of that act (p. 144) contained a proviso declaring that conveyances theretofore made "by members of any of the Five Civilized Tribes subsequent to the selection of allotment and subsequent to removal of restriction, where patents thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording or delivery of patent or deed."

The inalienability of the allotted lands was not due to the quality of the interest of the allottee, but to the express restriction imposed. Their equitable interest was one which in the absence of restriction they could convey. *Doe* v. *Wilson*, 23 How. 457; *Crews* v. *Burcham*, 1 Black, 352; *Barney* v. *Dolph*, 97 U. S. 652, 656; *Jones* v. *Meehan*, 175 U. S. 1, 15–18; *Godfrey* v. *Iowa Land & Trust Co.*, 21 Oklahoma, 293; 95 Pac. Rep. 792; *Mullen* v. *United States*, April 15, 1912, *ante*, p. 448. And, hence, on the removal of the restrictions upon alienation, the adult allottees not of

Indian blood were entitled to convey their surplus lands. So far as the bill assails such conveyances it is without equity.

As all the conveyances made to the appellants are not particularly described in the printed record before this court, it is impossible to specify those which were lawful and those which were obnoxious to the statute. We are of opinion (1) that the bill should be sustained so far as it relates to conveyances of homestead lands; (2) that it should also be sustained to the extent that it is directed against conveyances of surplus lands made by freedmen allottees who were minors and thus excepted from the provision of the act of April 21, 1904, and those made by adult allottees prior to that date; and (3) that so far as the bill relates to conveyances of surplus lands made by adult freedmen allottees subsequent to April 21, 1904, it should be dismissed.

The judgment of the Circuit Court of Appeals will therefore be affirmed, with the modification that the cause shall proceed in conformity with this opinion.

*It is so ordered.*

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## DEMING INVESTMENT COMPANY *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 434. Argued October 12, 13, 1911.—Decided April 29, 1912.

*Goat* v. *United States*, *ante*, p. 458, followed in regard to validity of conveyances of lands allotted to Seminole Indians, and the right of the United States to maintain actions to set such conveyances aside. 179 Fed. Rep. 13, modified and affirmed as to this point.

THE facts, which involve the validity of certain deeds and mortgages of allotted lands made by Seminole In-

dians and the right of the United States to have the same set aside, are stated in the opinion.

*Mr. J. C. Stone, Mr. Robert J. Boone* and *Mr. S. T. Bledsoe*, for appellants.[1]

*The Solicitor General* and *Mr. A. N. Frost* and *Mr. Harlow A. Leekley*, Special Assistants to the Attorney General, for the United States.[1]

MR. JUSTICE HUGHES delivered the opinion of the court.

The United States sought by this suit to cancel certain deeds and mortgages of lands allotted to members of the Seminole tribe of Indians. The judgment of the Circuit Court, sustaining demurrers to the bill, was reversed by the Circuit Court of Appeals. *United States* v. *Allen, and similar cases*, 179 Fed. Rep. 13.

The suit was brought on July 22, 1908, and embraced several conveyances to distinct grantees. This appeal is prosecuted—under § 3 of the act of June 25, 1910, c. 409, 36 Stat. 837—by only one of the defendants, The Deming Investment Company, of Oklahoma City.

The bill attacks mortgages made to this appellant, by others than the allottees, during the months of August, October and December, 1906. It is alleged that they were attempted incumbrances of allotted lands of members of the Seminole tribe; that none of these lands had been patented to individuals at the time of the transactions; and that all contracts for the sale, disposition and incumbrance of the lands prior to the date of patent were expressly declared by law to be void. (Agreement of December 16, 1897, ratified by the act of July 1, 1898, c. 542, 30 Stat. 567.)

In its brief the appellant states that "each conveyance only involves the surplus allotment and not the home-

[1] See abstract of arguments in *Heckman* v. *United States*, *ante*, p. 413.

stead of the particular allottee," a statement which we do not understand the Government to challenge so far as the mortgages to the appellant are concerned. The bill does not allege that these mortgages, or any of them, embraced homestead lands.

Nor is it alleged in the bill that any of the allottees whose allotments had been mortgaged to the appellant were of Indian blood, but the lands are described as those which had been allotted to Seminole freedmen whose names appear upon the freedmen rolls of that tribe. Upon the allegations of the bill, these allottees, so far as they were adults, must be held to come within the provision of the act of April 21, 1904, c. 1402 (33 Stat. 189, 204), which removed all restrictions upon alienation by adult allottees not of Indian blood with respect to their surplus lands; and, by virtue of the allotment, they had an interest in the allotted lands which on the removal of the restriction they were entitled to convey. *Goat* v. *United States*, decided this day, *ante*, p. 458.

Minors were excepted from this enabling provision of the act of 1904; and in one instance the mortgage is described as covering a portion of the allotment of a minor freedmen allottee, Ellen Sango, age 17. In this, as in other cases, the age of the allottees is given apparently as of the time when the mortgage was executed. The dates of the conveyances made by the allottees are not set forth.

Upon the authority of *Goat* v. *United States*, *supra*, the bill, with respect to the appellant, should be sustained so far as it relates to mortgages covering lands which had been conveyed by minor allottees, or by adult allottees before April 21, 1904; and it should be dismissed as to the surplus lands conveyed by adult freedmen allottees subsequent to that date. The judgment of the Circuit Court of Appeals is affirmed, with the modification that the cause shall proceed in conformity with this opinion.

*It is so ordered.*